

PHILLIPS PETROLEUM CO.

IBLA 82-1296

Decided February 25, 1983

Appeal from decision of the Colorado State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease C-9097.

Affirmed.

1. Oil and Gas Leases: Reinstatement

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that the failure to pay the rental timely was justifiable or not due to a lack of reasonable diligence. Where the lessee has notice of the proper office for making payment, the use of an incorrect address is not justified. Mailing payment 3 days before it is due using an incorrect address does not reflect reasonable diligence in taking into account delays occasioned by the incorrect address.

APPEARANCES: W. F. Moore, Supervisor-Rental Section, Western Division, Phillips Petroleum Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Phillips Petroleum Company has appealed the decision of the Colorado State Office, Bureau of Land Management (BLM), dated August 30, 1982, denying the petition for reinstatement of oil and gas lease C-9097 that had terminated by operation of law for failure to pay timely the annual rental.

On July 29, 1982, appellant's Denver Office sent by certified mail its annual rental payment for the lease that was due in the Colorado State Office, BLM, on August 1, 1982. ^{1/} The payment was addressed as follows:

^{1/} The anniversary date of the lease was Aug. 1, 1982, but since that day was Sunday, payment could be received on Aug. 2. 43 CFR 1821.2-2(e).

Bureau of Land Management
c/o Land Office
Denver, Colorado

The payment was received and signed for at BLM's Denver Service Center on August 2. On the same day, an employee of the Denver Service Center forwarded the payment to the Colorado State Office which received it on August 4. The Colorado State Office then issued a lease termination notice informing appellant that lease C-9097 had terminated because the rental was not received in its office until August 4.

By letter dated August 20, 1982, appellant petitioned for reinstatement, submitting a file copy of its payment reflecting the July 29 certified mailing and a copy of the front and back of its return receipt card. The card shows a stamped address of "Bureau of Land Management, Bldg. 50, Box 25047," a delivery date of August 2, 1982, and an August 2 postmark of the Post Office at the Denver Federal Center where BLM's Denver Service Center is located.

Since the Colorado State Office had received appellant's payment from the Denver Service Center without the original incoming envelope attached, it assumed that the payment had been addressed in the same manner as the return receipt card: "Bureau of Land Management, Bldg. 50, Box 25047." As a result, it issued the decision denying the petition for reinstatement for the following reasons:

This BLM office is known as the Service Center for the Bureau and operates in an administrative capacity only. It is not a "land office" and it does not now nor has it ever had jurisdiction over lands in Colorado. The Service Center forwarded the subject payment on August 2, 1982, and it was received in the Colorado State Office on August 4, 1982.

According to regulation, annual rental shall be paid to the authorizing officer of the proper office. Also, the payment must be sent or delivered sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the payment. (See 43 CFR 1821.2-1, 3103.1-2, and 3108.2-1(c)(2).) In this instance the proper BLM office is the Colorado State Office, whose present mailing address was published on September 10, 1981, as 1037 20th Street, Denver, CO 80202 (46 F.R. 45204, Sept. 10, 1981). This address is also printed on the courtesy billing which was sent to the lessee's address of record (Bartlesville, OK 94003).

It is the determination of this office that the lessee did not show reasonable diligence by mailing the subject payment to the wrong BLM office. Although the Service Center is located in the Denver metropolitan area, the normal delivery of mail from one facility to the other is at least one or two days.

In its statement of reasons, appellant explains that it uses a window envelope for mailing its rental payments so that the address printed on its

check becomes the mailing address and that it does not fill in the article address space on the certified return receipt card. Appellant speculates that the Denver Service Center stamped its address on the card upon receipt. In summary, appellant argues that its mailing on Thursday, July 29, should have effected delivery by at least August 2 within the same city of mailing. In addition, appellant submitted copies of its payments for 1979, 1980, and 1981 that were addressed and mailed in the same manner as its 1982 payment. Appellant points out that the stamped address of the Denver Service Center also appears on its 1980 payment and that its 1981 payment was mailed July 6, 1981, and delivered on July 8, 1981.

[1] A terminated oil and gas lease may be reinstated upon a showing by the lessee that the failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). In absence of such proof, a petition for reinstatement is properly denied. See, e.g., Arnold L. Gilberg, 57 IBLA 46 (1981); Alice M. Conte, 46 IBLA 312 (1980); J. R. Oil Corp., 36 IBLA 81 (1978). Untimely payment of the rental may be justified if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Harold W. Fullerton, 46 IBLA 116 (1980); Hubert W. Scudder, 35 IBLA 58 (1978). Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2).

Departmental regulation 43 CFR 3103.1-2 requires that payments be made to the proper office. The problem in this case is not that appellant directed its payment to the wrong BLM office, as BLM believed upon examining the return receipt card, but rather that appellant used an incorrect address. It is reasonable to assume that the Postal Service, when faced with neither a street address nor a zip code, looked up the Bureau of Land Management in its directory and discovered that there were two BLM offices with Denver addresses, neither one of which had the same name as that appearing on appellant's letter. ^{2/} Unfortunately for appellant, the Postal Service directed the payment to the wrong office.

It makes no difference to the outcome of this case who stamped the address on the return receipt card, either the Postal Service in its attempt to provide a correct address for the payment or the Denver Service Center to show where it was received. The payment was not timely received at the Colorado State Office because it was incorrectly addressed. Appellant must be held to have been on notice of the correct address as it was published in the Federal Register, 46 FR 45204 (Sept. 10, 1981), and printed on the courtesy notice of rental due sent to appellant. Martin Exploration Management Corp., 63 IBLA 287 (1982). Under these circumstances we cannot find the late payment to be justified.

^{2/} The complete address for BLM's Denver Service Center is Denver Federal Center, Building 50, Box 25047, Denver, Colorado 80225. BLM's Colorado State Office mailing address is 1037 20th Street, Denver, Colorado 80202.

While we might not have difficulty in finding that a properly addressed payment mailed within the same city 3 days before the due date constituted reasonable diligence, we cannot find that appellant exercised reasonable diligence in the circumstances of this case. Three days, including a weekend, is not sufficient time to allow for delays in transmittal and delivery occasioned by an improper address. Appellant could not reasonably expect that in so short a time an error in delivery would be corrected and the payment forwarded by the due date. See Monsanto Corp. v. Watt, Civ. No. 81-272 (D. Colo. Jan. 5, 1982). We note that in the 3 previous years appellant used the incorrect address but mailed payment much earlier in July. In 1979 and 1981, the payment was received by the Colorado State Office in 6 and 2 days, respectively, according to appellant's records. We note particularly that in 1980, when payment also apparently was received at the Denver Service Center, appellant issued its check on July 2 and the return receipt card indicates receipt on July 3. However, the Colorado State Office's receipt for payment form contained in the lease file shows payment received there on July 14. Thus, it appears that appellant only avoided in previous years the situation it now finds itself in because it mailed payment earlier and in two cases the Postal Service directed payment to the proper office.

BLM's decision rejecting appellant's petition for reinstatement of oil and gas lease C-9097 filed pursuant to 30 U.S.C. § 188(c) (1976) must be affirmed. We note, however, that section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to afford an additional opportunity to reinstate a lease terminated by operation of law. If appellant wishes to avail itself of this provision, it should inquire at the Colorado State Office, BLM.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

